

## NOTICE OF AGENCY RULE-MAKING ADOPTION

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** 11.22 2012-13 Closures (10) Blue Hill Bay Area  
(13) Jonesport/Machias Area. Emergency regulations

### CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in Blue Hill Bay and the Jonesport/Machias area in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. Previous emergency rulemaking action in the 2012-13 scallop season include adjustments to the daily possession limit and closures in Inner Blue Hill Harbor, Muscongus Area, Southeast Harbor, East Moosabec Reach, Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Blue Hill Bay and the Jonesport/Machias area as authorized by [12 M.R.S.A. §6171](#)(3).

**EFFECTIVE DATE:** February 4, 2013

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## DEPARTMENT OF MARINE RESOURCES

### Chapter 11 Scallops

#### 11.22 2012-13 Closures

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Mussel Ridge (6) which shall be open during the month of December in accordance with the dates specified in section 11.09. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Upper Chandler Bay

Northern boundary: South of a line starting at the Roque Island Cable Area between Jonesport and Roque Island.

Southern boundary: North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing to the most southern tip of Bonney Point, Roque Island.

(2) Mud Hole Channel

Northern boundary: South of a line drawn from the most eastern tip of Mud Hole Point, Great Wass Island to the most western tip of Crow Point, Head Harbor Island.

Southern boundary: North of a line from the most eastern tip of Little Pond Head, Great Wass Island to the most southern tip of Freeman Rock, then continuing on to the most southern tip of Mistake Island, continuing from the most eastern tip of Mistake Island to the most southern tip of Steele Harbor Island; then from the northern end of Great Herring Cove, Steele Harbor Island to the most southern tip of Man Island.

(3) Moosabec Reach

Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.

Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.

(4) Inner Harbor/Deep Hole

West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44 12.407 N Longitude 068 38.819 W.

(5) Blue Hill Salt Pond

All waters of the Blue Hill Salt Pond.

(6) Mussel Ridge

Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44 02.805 N Longitude 069 04.393 W to

RW "PA" Mo (A) GONG at; then continuing southwest to the northern tip of Two Bush Island.

Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.

(7) Ocean Point

West of a line drawn from Emerson Point, at the southern most tip of Ocean Point, Boothbay at Latitude 43 48.852 N Longitude 069 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N "8" AND East of a line draw from R N "8" to the most southwestern tip of Ocean Point at Latitude 43 48.874 N and Longitude 069 36.332 W.

(8) Eastern Casco Bay

Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "4" at Drunkers Ledges.

Western boundary: East and North of a line draw from R N "4" at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43 42.950N Longitude 70 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43 43.043N Longitude 70 00.128W.

(9) Hussey Sound

Northern boundary: South of a line draw from the most northern tip of Diamond Cove, Great Diamond Island at Latitude 43 41.047 N Longitude 070 11.311 W, East to the most western top of Long Island at Latitude 43 41.011 N Longitude 070 10.369 W.

Eastern boundary: West of a line drawn from the most southern tip of Jerry Point, Long Island to the most northeastern tip of Peaks Island at Latitude 43 39.801 N 70 10.622 W.

Southern Boundary: North of a line draw from the most northwestern tip of Peaks Island at Latitude 43 40.403 N 070 11.237 W to the eastern shore of Great Diamond Island Latitude 43 40.547 N Longitude 070 11.528 W.

(10) ~~Inner Blue Hill Harbor~~

~~West of a line drawn from the most western point of Sculpin Point, Blue Hill to the closest point of land on Parker Point, Blue Hill Neck.~~

Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgan's Bay Area):  
All waters of the Blue Hill Salt Pond; as well as waters North of a line drawn from  
Stills Point, Blue Hill Neck to the most northern point of Long Island, and then  
continuing to the most southwestern point of Newbury Neck.

(11) Muscongus Area

North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to a point directly South of Marshall Point, Port Clyde at Latitude 43 54.84 N Longitude 69 15.60 W then due North to the most southern tip of Marshall Point, Port Clyde.

(12) Southeast Harbor

North of a line starting at the most southwestern tip of Stinson Neck, Deer Isle running west to Coles Point on Whitmore Neck, Deer Isle; this includes all of Southeast Harbor.

(13) ~~East Moosabec Reach~~

~~East of the Jonesport-Beals Island bridge and west of a line starting at the western end of the breakwater in Sawyer's Cove to the most western end of Pig Island and then due south to the closest point of land on Great Wass Island.~~

Jonesport/Machias Area:

(a) The Reach: East and north of a line starting at the most eastern end of Tibbett Island going due north to the closest point of land on Moose Neck and then east to the most northern end of Ram Island at Latitude 44° 29'41.56" N Longitude 67°37'53.31" W then on to the most western end of Slate Island and then from the eastern most tip of Slate Island to the nearest point of land along the southern shore of Slate Island Cove on Great Wass Island and west of a line starting at the western end of the breakwater Sawyer's Cove the southeast to the most western end of Pig Island and then due south to the closes point of land of Great Wass Island.

(b) Chandler Bay/Englishman's Bay: North of the Roque Island Cable Area running between Jonesport and Roque Island and north of a line starting at the most northeastern point of Great Head, Roque, Island; then northeast to the most southern end of Shoppee Point, Roque Bluffs.

(c) Machias Area: North and east of a line starting at Bucks Head, Machiasport proceeding east to the southern end of Northwest Head on Cross Island then due south to the 3-mile line, and west of a line drawn due south from Great Head, Cutler to the 3-mile limit.

(14) Gouldsboro & Dyer Bays

North of a line drawn from the eastern most tip of Young's Point, Corea, to the western most tip of Sheep Island, then following the shore to the most eastern point of Sheep Island to the most southern tip of Sally Island, the following the shore to the most eastern point of Sally Island to the most southern tip of Eastern Island, the following the shore to the most eastern point of Eastern Island to the southern most tip of The Castle and then continuing in a easterly direction to Bear Cove on Petite Manan Point, Stueben at Latitude 44° 24'25.65" N Longitude 67° 54'24.98" W including all of Gouldsboro and Dyer Bays.

(15) Damariscotta River

North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(16) Somes Sound

North and West of a line drawn from the southern most tip of Sargent Point, Northeast Harbor, southwesterly to the most northern tip of Kings Point, Southwest Harbor, including all of Somes Sound.

This regulation, Chapter 11.22, expires March 22, 2013.

# Basis Statement

## **Chapter 11.22 2012-13 Closures (10) Blue Hill Bay Area (13) Jonesport/Machias Area. Emergency regulations**

### Justification:

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than a half million pounds each year since 2001 (Figure 1). In 2009, due to the fact that scallop populations throughout the state were at extremely low levels, the Department enacted a series of Closed Areas to allow the resource to rebuild. These Closed Areas, now called Limited Access Areas, re-opened this season to harvest. In 2011, all the Limited Access Areas were surveyed to provide a biomass estimate of the harvestable poundage of scallops available in each area. As part of the rebuilding plan, a trigger mechanism was included during rulemaking that would ensure that the biomass in these Limited Access Areas would be sustainably harvested to ensure rebuilding can continue while allowing for a limited fishery to occur in these areas. The trigger mechanism was designed to close the Limited Access Areas when there was likelihood that 30-40% of the harvestable biomass had been removed. Based on Marine Patrol and Sea Sampling observations as well as direct industry reports, the 30-40% threshold has been met and/or exceeded in two of the Limited Access Areas (LAA). These areas now include the entire Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgan's Bay Area) and the entire Jonesport/Machias Area (including The Reach, Chandler Bay and Machias Area). The inner Blue Hill Harbor area had been previously closed earlier this season via emergency rulemaking. This closure is now being expanded to include the entire Blue Hill Bay LAA. The eastern portion of The Reach LAA (East Moosabec Reach area) had been previously closed under emergency rulemaking as well. That closure is now being expanded to include the entire Jonesport/Machias LAA. These closures are needed to ensure that there is enough biomass left to provide the critical mass of scallops for successful recruitment and spawning, thus ensuring that rebuilding continues. Previous emergency rulemaking actions in the 2012-13 scallop season included adjustments to the daily possession limit and closures in Inner Blue Hill Harbor, Muscongus Area, Southeast Harbor, East Moosabec Reach, Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound.

Due to a large bed of scallops located outside of the Blue Hill Bay LAA, a sizable component of the mobile scallop fleet (60 vessels) moved into this area during the first week of the fishery. Approximately 30 vessels fished the inner confines of Blue Hill Harbor, resulting in its immediate depletion and closure on December 8<sup>th</sup>, while the remaining portion of this LAA remained open for continued fishing opportunities. While the majority of the mobile fleet moved out of the Blue Hill Bay LAA after this first week, local vessels have continued to fish in the area. The trigger threshold for this LAA is 29,820 lbs. (30%) of an estimated 99,400 lbs. of harvestable biomass. Based on Marine Patrol, sea sampling observations and direct industry reports, approximately 41,090 lbs. (41%) of the scallop biomass has been harvested from this LAA and an immediate conservation closure of the entire Blue Hill Bay LAA is needed as the trigger threshold of 30-40% has been exceeded.

There are three subcomponents to the Jonesport/Machias LAA: The Reach, Chandler Bay and Machias Bay LAAs. The eastern portion of The Reach LAA (East Moosabec Reach) was the site of heavy fishing pressure during the first three weeks of the season, resulting in its emergency closure on December 22<sup>nd</sup>. The remaining portion of this LAA remained open for continued fishing opportunities. While some of those vessels moved to other LAAs to fish, many remained in The Reach LAA. Based on Marine Patrol observations and direct industry reports, many boats have not been able to reach even their reduced (15 gallon) daily limit after fishing the entire day over the past two weeks. Therefore, an immediate conservation closure of the entire The Reach LAA is needed as Catch Per Unit Effort rates indicate that the 30-40% trigger has been exceeded for this area. In the Chandler Bay subcomponent of this Jonesport/Machias LAA, Marine Patrol observations and direct industry reports indicate that the majority of the vessels have not been able to reach even their reduced (15 gallon) daily limit after fishing the entire day over the past two weeks. Furthermore, none of these vessels reached their limit this

past week. Therefore, an immediate conservation closure of the entire Chandler Bay LAA is now needed as Catch Per Unit Effort rates indicate that the 30-40% trigger has been exceeded for this area. Finally, the trigger threshold for the Machias Bay LAA is 23,854 lbs. (30%) of an estimated 79,514 lbs. of harvestable biomass. Based on Marine Patrol observations in combination with direct industry reports, approximately 24,245 lbs. (31%) of scallops have been harvested and an immediate conservation closure of this LAA is needed as the trigger threshold for this area has been met.

The Department is concerned that continued harvesting during the remainder of the 2012/2013 fishing season in these areas would damage sublegal scallops that could be caught during subsequent fishing seasons. Continued harvesting would also reduce any remaining broodstock that is essential to a recovery, within the Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgans Bay Area) and the Jonesport/Machias Area (The Reach, Chandler Bay and Machias Area). An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the Blue Hill Bay and Jonesport/Machias LAAs.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgans Bay Area) and the Jonesport/Machias Area (The Reach, Chandler Bay and Machias Area) to protect against unusual damage and imminent depletion as authorized by [12 M.R.S.A. §6171\(3\)](#).

In accordance with [5 M.R.S.A. §8052, sub-§5-A](#), a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

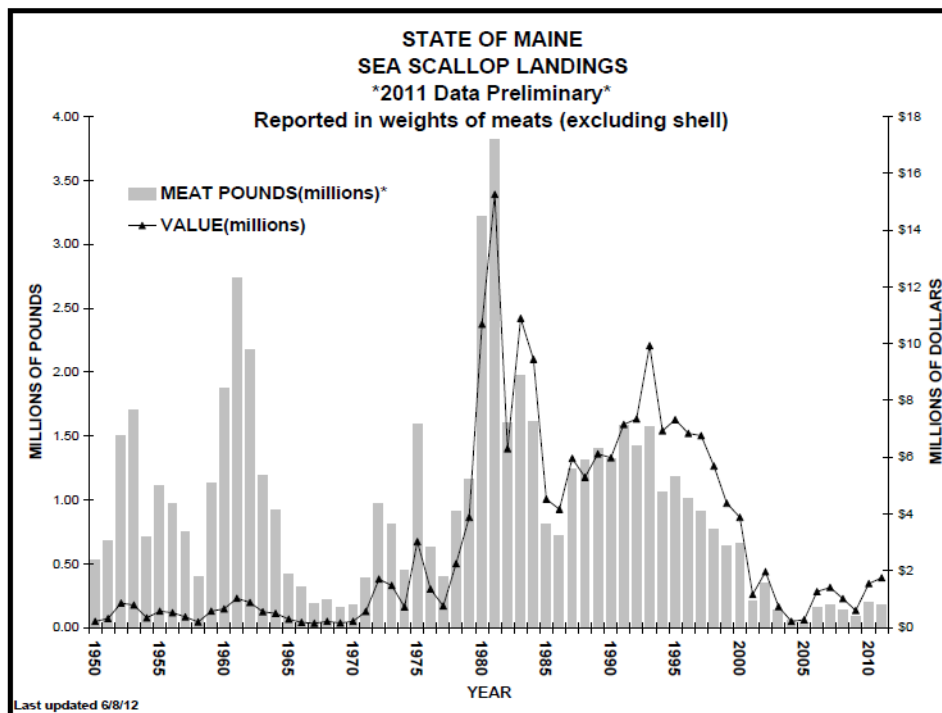


Figure 1. Maine scallop landings from 1950 to 2011.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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**CHAPTER NUMBER AND RULE:** Chapter 11.22 2012-13 Closures (10) Blue Hill Bay Area  
(13) Jonesport/Machias Area. Emergency regulations

**STATUTORY AUTHORITY:** [12 M.R.S.A. §6171](#)(3)

**DATE AND PLACE OF PUBLIC HEARING:** None, Emergency rulemaking

**COMMENT DEADLINE:** None, Emergency rulemaking

**PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:**

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in Blue Hill Bay and Jonesport/Machias Areas in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in Blue Hill Bay and Jonesport/Machias Areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Blue Hill Bay and Jonesport/Machias Areas as authorized by [12 M.R.S.A. §6171](#)(3).

**ANALYSIS AND EXPECTED OPERATION OF THE RULE:**

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry. These closures are needed to ensure that there is enough biomass left to provide the critical mass of scallops for successful recruitment and spawning, thus ensuring that rebuilding continues. Previous emergency rulemaking action in the 2012-13 scallop season included adjustments to the daily possession limit and closures in Inner Blue Hill Harbor, Muscongus Area, Southeast Harbor, East Moosabec Reach, Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound.

**FISCAL IMPACT OF THE RULE:**

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.